

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

GEORGE WEGERS, et al.,

Defendants.

CASE NO. CR05-0231C

ORDER

This matter comes before the Court on Defendant James Austin Pennell's Motion for Notice of Intent to Use 404(b) Evidence (Dkt. No. 411). Defendants Henschel, Offley, and Anderson join in the motion. (*See* Dkt. Nos. 461, 470, 476.) Having considered the papers submitted by all parties and finding oral argument unnecessary, the Court DENIES Defendant's motion.

By this motion, Defendant seeks an order requiring the government to "identify with specificity any evidence it intends to introduce under [Federal Rule of Evidence] 404(b) no later than 21 days" before trial. (Def.'s Mot. 2.) Rule 404(b) provides, in relevant part, that if the government intends to introduce at trial any evidence of prior bad acts, it must "provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence." FED. R. EVID. 404(b). The Advisory Committee Notes to 404(b) state that the rule "is

1 intended to reduce surprise and promote early resolution on the issue of admissibility.” *Id.* advisory
2 comm. note, 1991 amendment. However, as the government correctly notes, Rule 404(b) does not
3 mandate that the “general nature” of such evidence be revealed to the defense at any particular time
4 before trial. Rather, the rule requires only that the timing of the government’s disclosure be reasonable
5 under the circumstances:

6 The Rule expects that counsel for . . . the prosecution will submit the necessary
7 request and information in a reasonable and timely fashion. Other than requiring
8 pretrial notice, no specific time limits are stated in recognition that what constitutes a
9 reasonable request or disclosure will depend largely on the circumstances of each case.

10 *Id.* Thus, the Court must determine whether the circumstances of this case, at this particular time,
11 warrant an order requiring the government to disclose the general nature of all 404(b) evidence twenty-
12 one days before trial.

13 While disputing the need to set a specific date for disclosure, the government has expressed its
14 intent to make the required disclosures in advance of trial. (*See* Pl.’s Opp’n 2.) Keeping in mind the
15 large number of defendants and corresponding potential for voluminous amounts of 404(b) evidence, the
16 Court makes known here its expectation that the government will make its disclosure such as to allow
17 ample time for any defendant to fully review the evidence and prepare appropriate motions in limine
18 before trial. However, with the current trial date yet three months away and with the discovery process
19 presently in full swing, the Court cannot find that reasonableness demands the government’s disclosure a
20 full twenty-one days before trial.

21 For these reasons, Defendant’s motion is DENIED.

22 SO ORDERED this 11th day of October, 2005.

23 

24 UNITED STATES DISTRICT JUDGE